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Attorneys for Plaintiff and the Proposed Class

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DR. TIMOTHY COLLINS and SIDNEY
NAIMAN, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

TOTAL MERCHANT SERVICES, INC.,
QUALITY MERCHANT SERVICES, INC.,
MICHAEL ALIMENTO and BOBBY
POWERS

Defendants.

Case No. 4:17-cv-03806-CW

**DECLARATION OF MATTHEW P.
McCUE IN SUPPORT OF
PLAINTIFF'S MOTION FOR
CLASS CERTIFICATION**

JURY TRIAL DEMAND

Complaint Filed: July 5, 2017

DATE: August 14, 2018

TIME: 2:30 p.m.

LOCATION: 1301 Clay St.,
Oakland, CA 94612

I, Matthew P. McCue, declare as follows:

1. I am the principal at the law firm of The Law Office of Matthew P. McCue, co-counsel of record for Plaintiff in this matter. I am a member in good standing of the bar in the Commonwealth of Massachusetts. I respectfully submit this declaration in support of Plaintiff's Motion for Class Certification. I have personal knowledge of the following facts:

2. I have extensive experience in the prosecution of class actions on behalf of consumers, particularly claims under the Telephone Consumer Protection Act, 47 U.S.C. §227.

3. I am a 1993 honors graduate of Suffolk Law School in Boston, Massachusetts. Following graduation from law school, I served as a law clerk to the Justices of the Massachusetts Superior Court. I then served a second year as a law clerk for the Hon. F. Owen Eagan, United States Magistrate Judge for the USDC District of Connecticut.

4. In 1994, I was admitted to the Bar in Massachusetts. Since then, I have been admitted to practice before the United States District Court for the District of Massachusetts, the First Circuit Court of Appeals, the United States District Court for the District of Colorado, the Sixth Circuit Court of Appeals and the United States Supreme Court.

5. Following my clerkships, I was employed as a litigation associate with the Boston law firm of Hanify & King. In 1997, I joined the law firm of Mirick O'Connell as a litigation associate where I focused my trial and appellate practice on plaintiff's personal injury and consumer protection law.

6. In the summer of 2002, I was recognized by the legal publication Massachusetts Lawyers Weekly as one of five "Up and Coming Attorneys" for my work on behalf of consumers and accident victims.

7. My firm keeps contemporaneous time records in Timeslips billing program.

8. In November of 2004, I started my own law firm focusing exclusively on the litigation consumer class actions and serious personal injury cases.

9. My billable rate for this matter is \$700 an hour. I am familiar with the rates of attorneys of similar background and experience nationally and am confident the rates are reasonable and in keeping with rates used by other attorneys with similar training and experience. I have used these rates in calculating lodestar for attorneys' fee purposes in several other nationwide class actions, and they have been approved as reasonable by numerous state and federal courts in approving settlements. *See e.g., Mey v. Frontier Communications Corporation*, No. 3:13-cv-1191-MPS (D. Ct. June 9, 2017) (approving a \$11,000,000 settlement and attorney fee of one-third that amount based on my hourly rate of \$700); *Heidarpour v. Central Payment Co.*, No. 16-cv-01215 (M.D. Ga. May 4, 2017) (approving a \$6,500,000

1 settlement and attorney fee of one-third that amount based on my hourly rate of \$700); *Mey v.*
 2 *Interstate National Dealer Services, Inc.*, No. 14-01846 (N.D. Ga June 8, 2016) (approving
 3 \$4,200,000 settlement and attorney fee of one-third that amount based on my hourly rate of
 4 \$700).

5 10. A sampling of other class actions in which I have represented classes of
 6 consumers under the Telephone Consumer Protection Act and been appointed class counsel
 7 follows:

8
 9 i. *Mey v. Herbalife International, Inc.*, USDC, D. W. Va., Civil Action No. 01-C-263M.
 10 Co-lead counsel with Attorney Broderick and additional co- counsel, prosecuting
 11 consumer class action pursuant to TCPA on behalf of nationwide class of junk fax
 12 and prerecorded telephone solicitation recipients. \$7,000,000 class action settlement
 13 preliminarily approved on July 6, 2007 and granted final approval on February 5,
 14 2008.

15
 16 ii. *Mulhern v. MacLeod d/b/a ABC Mortgage Company*, Norfolk Superior Court, 2005-
 17 01619 (Donovan, J.). Representing class of Massachusetts consumers who received
 18 unsolicited facsimile advertisements in violation of the TCPA and G.L. c. 93A.
 19 Case certified as a class action, and I was appointed co-lead counsel with Attorney
 20 Edward Broderick by the Court on February 17, 2006, settlement for \$475,000
 21 granted final approval by the Court on July 25, 2007.

22
 23 iii. *Evan Fray-Witzer, v. Metropolitan Antiques, LLC*, NO. 02-5827 Business Session,
 24 (Van Gestel, J.). In this case, the defendant filed two Motions to Dismiss
 25 challenging the plaintiff's right to pursue a private right of action and challenging
 26 the statute at issue as violative of the telemarketer's First Amendment rights. Both
 27 Motions to Dismiss were denied. Class certification was then granted, and I was
 28

1 appointed co-lead class counsel. Companion to this litigation, my co-counsel and I
2 successfully litigated the issue of whether commercial general liability insurance
3 provided coverage for the alleged illegal telemarketing at issue. We ultimately
4 appealed this issue to the Massachusetts Supreme Judicial Court which issued a
5 decision reversing the contrary decision of the trial court and finding coverage. *See*
6 *Terra Nova Insurance v. Fray-Witzer et al.*, 449 Mass. 206 (2007). This case
7 resolved for \$1,800,000.

8
9 iv. *Shonk Land Company, LLC v. SG Sales Company*, Circuit Court of Kanawha
10 County, West Virginia, Civil Action No. 07-C-1800, settlement for \$2,450,000,
11 final approval granted in September of 2009.

12
13 v. *Mann & Company, P.C. v. C-Tech Industries, Inc.*, USDC, D. Mass., C.A.
14 1:08CV11312-RGS, class action on behalf of recipients of faxes in violation of
15 TCPA, settlement for \$1,000,000, final approval granted in January of 2010.

16
17 vi. *Evan Fray Witzer v. Olde Stone Land Survey Company, Inc.*, Massachusetts Superior
18 Court, Civil Action No. 08-04165 This matter settled for \$1,300,000 and final
19 approval was granted on February 3, 2011.

20
21 vii. *Milford & Ford Associates, Inc. and D. Michael Collins vs. Cell-Tek, LLC*,
22 USDC, D. Mass. C. A. 1:09-cv- 11261-DPW, class action on behalf of recipients
23 of faxes in violation of TCPA, settlement for \$1,800,000, final approval granted
24 August 17, 2011.

- viii. *Collins v. Locks & Keys of Woburn Inc.*, Massachusetts Superior Court, Civil Action No. 07-4207-BLS2 final approval granted August 17, 2011 for TCPA class settlement of \$2,000,000.
- ix. *Brey Corp t/a Hobby Works v. Life Time Pavers, Inc.*, Circuit Court for Montgomery County, Maryland, Civil Action No. 349410-V. This matter settled for \$1,575,000. Final approval granted in March 2012.
- x. *Collins, et al v. ACS, Inc. et al.*, USDC, District of Massachusetts, Civil Action No. 10-CV-11912 a TCPA case for illegal fax advertising, which settled for \$1,875,000 with final approval granted on September 25, 2012.
- xi. *Desai and Charvat v. ADT Security Services, Inc.*, USDC, Northern District of Illinois, Civil Action No. 11-CV-1925, settlement of \$15,000,000 granted final approval on June 21, 2013.
- xii. *Benzion v. Vivint*, 0:12-cv-61826, USDC S.D.Fla., settlement of \$6,000,000 granted final approval in February of 2015.
- xiii. *Kensington Physical Therapy v. Jackson Physical Therapy Partners*, USDC, District of Maryland, 8:11cv02467, settlement of \$4,500,000 granted final approval in February of 2015.
- xiv. *Jay Clogg Realty v. Burger King Corp.*, USDC, District of Maryland, 8:13cv00662, settlement of \$8.5 million granted final approval in May of 2015.

- xv. *Charvat v. AEP Energy*, 1:14cv03121 ND Ill, class settlement of \$6 million granted final approval on September 28, 2015.
- xvi. *Dr. Charles Shulruff, D.D.S. v. Inter-med, Inc.*, 1:16-cv-00999, ND Ill, class settlement of \$400,000 granted final approval on November 22, 2016.
- xvii. *Toney v. Quality Resources, Inc., Cheryl Mercuris and Sempris LLC*, 13-cv-00042, in which a TCPA class settlement was granted final approval on December 1, 2016 with TCPA settlement in the amount of \$2,150,00, and a second settlement against the remaining defendants for \$3,300,000 was granted preliminary approval on May 30, 2018.
- xviii. *Bull v. US Coachways, Inc.*, USDC, ND. Ill., 1:14-cv-05789, in which a TCPA class settlement was finally approved on November 11, 2016 with an agreement for judgment in the amount of \$49,932,375 with an assignment of rights against defendant's insurance carrier.
- xix. *Smith v. State Farm Mut. Auto. Ins. Co. , et. al.*, USDC, ND. Ill., 1:13-cv-02018, TCPA class settlement of \$7,000,000.00 granted final approval on December 8, 2016.
- xx. *Mey v. Frontier Communications Corporation*, USDC, D. Ct., 3:13-cv-1191-MPS, a TCPA class settlement of \$11,000,000 granted final approval on June 2, 2017.
- xxi. *Biringer v. First Family Insurance, Inc.*, USDC, ND. Fla., a TCPA class settlement of \$2,900,000 granted final approval on April 24, 2017.

- xxii. *Abramson v. Alpha Gas and Electric, LLC*, USDC, SD. NY., 7:15-cv-05299-KMK, a TCPA class settlement of \$1,100,000 granted final approval on May 3, 2017.
- xxiii. *Heidarpour v. Central Payment Co.*, USDC, MD. Ga., 16-cv-01215, a TCPA class settlement of \$6,500,000 granted final approval on May 4, 2017.
- xxiv. *Abante Rooter and Plumbing, Inc. v. New York Life Insurance Company*, USDC, SD. NY., 1:16-cv-03588-BCM, a TCPA class settlement of \$3,250,000 granted final approval on February 27, 2018.
- xxv. *Abramson v. CWS Apartment Home, LLC*, USDC, WD. Tex., 16-cv-01215, a TCPA class settlement of \$368,000.00 granted final approval on May 19, 2017.
- xxvi. *Charvat v. Elizabeth Valente, et al.*, USDC, NDIL, 1:12-cv-05746, \$12,500,000 TCPA settlement granted preliminary approval on July 6, 2017.
- xxvii. *Mey v. Got Warranty, Inc., et. al.*, USDC, NDWV., 5:15-cv-00101-JPB-JES, a TCPA class settlement of \$650,000 granted final approval on July 26, 2017.
- xxviii. *Mey v. Patriot Payment Group, LLC*, USDC, NDWV., 5:15-cv-00027-JPB-JES, a TCPA class settlement of \$3,700,000 granted final approval on July 26, 2017.
- xxix. *Charvat and Wheeler v. Plymouth Rock Energy, LLC, et al.*, USDC, EDNY, 2:15-cv-04106-JMA-SIL, a TCPA class settlement of \$1,675.000 granted preliminary approval on September 15, 2017.

xxx. *Fulton Dental, LLC v. Bisco, Inc.*, USDC, NDIL, 1:15-cv-11038. TCPA class settlement for \$262,500 granted final approval on March 7, 2018.

xxxi. *Abante Rooter and Plumbing, Inc. v. Birch Communications, Inc.*, USDC, NDGA, 1:15-cv-03262-AT. TCPA class settlement of \$12,000,000 granted final approval on December 14, 2017.

xxxii. *In re Monitronics International, Inc.*, USDC, ND. WV., 1:13-md-02493-JPB-JES, a TCPA class settlement of \$28,000,000 granted final approval on June 12, 2018.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED in Natick, Massachusetts, this 10th day of July, 2018.

/s/ Matthew P. McCue
Matthew P. McCue